

SERVED: FEBRUARY 19, 2009

DEPT. OF TRANSPORTATION
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U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

NUTRAMEDIX, LLC

FAA DOCKET NO. CP08SO0029
(Civil Penalty Action)

DMS NO. FAA-2008-1306

ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE

This proceeding arises from a complaint served November 21, 2008, alleging violation of the Federal Aviation Act/Regulations, and the Respondent's request for hearing dated November 18, 2008. The undersigned administrative law judge was assigned to this proceeding by Notice served February 19, 2009.

The Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. §§ 13.201-13.235). Those rules provide, *inter alia*, that the Respondent must file a written answer or motion within 30 days after service of the complaint (§ 13.209(a)); that a general denial is deemed a failure to file an answer (§ 13.209(e)); that failure to file an answer without good cause is deemed an admission of each allegation in the complaint (§ 13.209(f)), and that a party seeking an extension of time must file a written motion at least seven days before the document is due, absent agreement of the parties or good cause shown

(§ 13.213(a) and (b)).

To expedite the hearing in this matter, Complainant and the Respondent, on or before April 20, 2009, shall file (1) any amendment of the complaint or answer;¹ (2) an agreed or separate proposed procedural schedules, including proposed dates (*i.e.*, specific dates, not merely numbers or days before the hearing) for (a) filing stipulations, a list of witnesses, a summary of their proposed testimony, and for (b) exchanging exhibits and discovery, if any; (3) a statement concerning the status of settlement efforts; and (4) a proposed hearing site and, absent agreement of the parties, a justification of the proposed site. *See* 14 C.F.R. § 13.217.

Under FAA Order 2150.3B (Oct. 1, 2007) and the Rules governing these proceedings, Complainant and the Respondent should continue to consider the possibility of settlement and compromise of this matter.² In connection with such discussions, the parties should note that FAA Order 2150.3B, which establishes standards for the Complainant's conduct and settlement of this proceeding, is available on the Internet.³ See, in particular, chapter 6 (Legal Enforcement Actions and Legal Counsel Responsibilities); and either (a) Appendix B (Table of Sanctions), pages B-1—B8 (Part One – Abbreviations and Definitions) and those portions of Part Two – Sanction Guidance Tables, which apply to particular allegations not involving hazardous materials, or

¹ Further amendments are not anticipated absent good cause shown. Though 14 C.F.R. § 13.214(b)(1) permits amendments at any time more than 15 days before a hearing, utilization of that provision would prevent orderly preparation for a hearing and could prevent any hearing at all, because notice of a hearing must be given 60 days in advance. 14 C.F.R. § 13.221(a). An amendment that might be filed 15 days prior to the hearing would entitle the other party up to 20 days in which to reply (14 C.F.R. § 13.214(c)), and could generate a new round of schedules (14 C.F.R. § 13.217), motions (14 C.F.R. § 13.218), and discovery (14 C.F.R. § 13.220), necessitating a postponement of the hearing, a new 60-day notice, *et cetera ad infinitum*.

² See *Linda Joyce Goodman*, FAA Docket No. CP89WP0061, DMS No. FAA-2004-18292, at 11 (May 30, 1989), available at www.regulations.gov (concluding that “the prosecuting agency attorney must consider settlement and that the Rules do not permit the Chief Counsel to exercise policy control or decisionmaking in this case or in civil penalty cases generally so as to deny prosecutorial discretion with respect to settlement and compromise to the agency attorney as defined in the rules”). See also Exec. Order No. 12,988, 61 Fed. Reg. 4729 (Feb. 5, 1996), which refers to facilitating the just and efficient resolution of civil claims involving the United States Government and which directs Federal agencies and their litigation counsel to, “as soon as practicable after ascertaining the nature of a dispute in litigation, and throughout the litigation, . . . evaluate settlement possibilities and make reasonable efforts to settle the litigation.” See also FAA Order 2150.3B at paragraph 6-2.

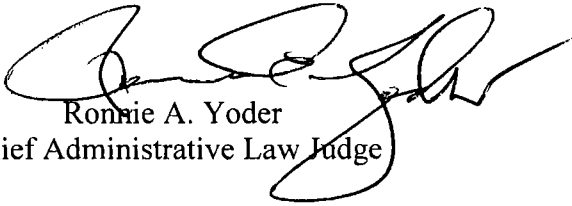
³ Accessed at <http://rgl.faa.gov> by selecting “Orders/Notices,” then “Current Orders; By Number.”

(b) Appendix C, which pertains to hazardous materials cases. Upon request of Respondent, Complainant shall provide Respondent a copy of the applicable referenced provisions.

Submissions sent to the street address of the U.S. Department of Transportation, Office of Hearings, by regular mail may be delayed up to four weeks due to postal screening and may be "irradiated," which may result in pages being fused together. Accordingly, parties who serve submissions on the Judge by regular mail should also fax, express carrier, or personally deliver those submissions. The certificate of service should reflect the manner of service.

Compromise may be effected with or without a finding of violation (§ 13.16(n)). Each party's filing shall include a telephone number where the party can be reached by the Judge for prehearing telephone conferences.

SO ORDERED.


Ronnie A. Yoder
Chief Administrative Law Judge

Attachment - Service List

SERVICE LIST

ORIGINAL & ONE COPY

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Attn: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014⁵

ONE COPY

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The Honorable Ronnie A. Yoder
Chief Administrative Law Judge
Office of Hearings, M-20
Room E12-320
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590
TEL: (202) 366-2142
FAX: (202) 366-7536

⁵ Service was by U.S. Mail. For service in person or by expedited courier, use the following address:
Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building – Room
2014, Washington, DC 20591, Att: Hearing Docket Clerk, AGC-430.